

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4683 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KC PATEL

Versus

DIST DEVELOPMENT OFFICER

Appearance:

MR JD AJMERA for Petitioner

MR HS MUNSHAW for Respondent No. 1

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/08/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Challenge has been made by the petitioner by this special civil application to the order of the respondent No.1 dated 14-5-1990, annexure 'C' and the judgment and order of the Gujarat Civil Services Tribunal in Appeal No.194 of 1990 dated 2-5-1991. Under the first order,

the petitioner was ordered to be reverted from the post of Deputy Accountant to the post of Senior Clerk. This order has been challenged by the petitioner before the Gujarat Civil Services Tribunal at Ahmedabad in Appeal No.194/90 which came to be dismissed under the order dated 2-5-1991. Hence, this special civil application before this court.

3. It is the contention of the learned counsel for the petitioner that the respondents No.4, 5 and 6 are not direct recruits on the post of Deputy Accountant but they have been promoted on this post. This is controverted by the counsel for the respondents on the ground that it is a case of direct recruitment. The learned counsel for the petitioner contended that the respondents NO.4, 5 and 6 were in service candidates and even if it is taken to be a case where they were directly recruited on the post of Dy. Accountant, they could have been reverted on the post of Senior Accounts Clerk where the post of Deputy Accountants were not available to the extent of requisite number, on the principles of 'last come first go'. It has next been contended by the learned counsel for the petitioner that the Tribunal accepted as a fact that the petitioner was senior to the respondents NO.4, 5 and 6 in the cadre of Deputy Accountant. That seniority was only material, what he contends, for applying the principle of 'last come first go'.

4. The counsel for the respondent No.1, on the other hand, contended that the petitioner was promoted only on adhoc and temporary basis and as he has no right to the post and where for reduction of the posts or for some other reason, reversion has to be made, he has to go as the respondents No.4, 5 and 6 were appointed in substantive capacity. These are the points which were not adjudicated and decided by the tribunal though they go to the root of the matter. In case the petitioner was ad hoc promotee on the post of Deputy Accountant and the respondents NO.4 to 6 are substantive appointees on the post, there may be some semblance of justification in the contention of the learned counsel for the respondent NO.1 but that point has not been adjudicated and decided by the Tribunal. Similarly, in case the respondents NO.4 to 6 are in service direct recruits then there may be some semblance of justification in the contention of the learned counsel for the petitioner that they could have been reverted back to the lower post. This point has also not been considered and decided in its correct perspective. The Tribunal felt contended and satisfied by saying only that the petitioner was though senior but as the respondents No.4 to 6 are direct recruits cannot

be reverted. This approach of the Tribunal is not legally sustainable as other broad aspects are to be taken care of and decided. This is a case where the matter deserves to be remanded back to the Tribunal.

5. In the result, this special civil application succeeds in part and accordingly it is partly allowed and the judgment of the Gujarat Civil Services Tribunal dated 2-5-1991, annexure 'D' is quashed and set aside and the matter is remanded back to the Tribunal to decide the same afresh in accordance with law and in the light of the observations made in this judgment. Rule is made absolute accordingly with no order as to costs.

zgs/-